

## **REMARKS**

Request for reconsideration of withdrawn method claims 11-15 is requested. These method claims are drawn to the same features as composition claims 1-10 and 16. Further, a search of the composition claims and the method claims would not present an undue hardship because these claims are drawn to common features falling within the same search class and subclass.

The examiner of the International Searching Authority (*see* enclosed IPER, points 2 and 3) also regards Porcello (U.S. Serial No. 4,865,859 as the closest prior art as it also deals with filler creams and their organoleptic properties. Yet this examiner found that Porcell neither (1) discloses the vegetable oil having a SFI of 0 at room temperature, nor (2) the combination with a gluten fraction having a specific gluten content. Therefore, reconsideration and allowance of all claims is requested.

**The subject matter of claims 1, 10 and 16 would not have been obvious from a combination of Cochran (U.S. Serial No. 4,260,643) and McDonald (U.S. Serial No. 3,030,211). Claims 1, 10 and 16 are patentable under 35 U.S.C. § 103(a).**

### **Claim 1:**

Claim 1 has been amended to include the features of claim 7, wherein a wheat gluten fraction is comprised of a gliadin-rich fraction having a gliadin/glutenin ratio that is at least 2. This is a feature that neither McDonald nor Cochran, alone or in combination, teaches, suggests, or motivates.

Claim 1 also contains the features of a lipid faction composed of a vegetable oil having a solid fat index (SFI) of zero at room temperature. The SFI is a measure of the percentage of fat in solid phase to total fat (*i.e.*, the remainder in liquid phase) across a temperature gradient.

Additionally, Claim 1 contains the features of a saturated fat fraction representing between 0 % and 5 % by weight (w/w) of the total lipid fraction and a partially hydrogenated fat fraction representing between 0 % and 1 % by weight (w/w) of the total lipid fraction.

The reference of Cochran (col. 4, lines 30-35) is used to teach the features of a lipid fraction having a SFI of 0 (zero) at room temperature and a saturated fat fraction representing between 0% and 5% by weight of the total lipid fraction. In particular, this reference is used for trisaturated glycerides, from 5-20%, of 40-55% triglycerides i.e. 2% ( $5 \times 40 = 2\%$ ). However, lines 30-35 of Cochran do not teach these claimed features. Rather, Cochran states:

The triglyceride composition will contain, by weight, 40-55% saturated fatty acids...[where] the total amount, by weight, of trisaturated glycerides will be from about 5 to 20%...Total amount of liquid oils at room temperature (72 °F) is extremely low, usually less than 10% by weight.

Cochran, col. 4, lines 30-35.

From the above text, it is clear that Cochran cannot be used for two reasons. First, the triglyceride composition contains 40-55% saturated fatty acids by weight. Of this composition, the amount of trisaturated glycerides will be 5 to 20% by weight. However, these numerical ranges cannot be multiplied together to teach the feature of the present invention because the amount of trisaturated glycerides is but a subset in the triglyceride composition having 40-55% saturated fatty acids by weight. Because the saturated fat fraction falls outside the numerical range contained in claim 1, Cochran does not teach this feature.

Second, Cochran does not teach a saturated fat fraction between 0% and 5% because this reference teaches a lipid fraction having a Solids Fat Index (SFI) between 57.2-76.8 at or around room temperature (*i.e.*, 70 °F), whereas the claimed invention requires a SFI of 0 at room temperature. *See* Cochran, col. 4, lines 25-28. Cochran expressly states that the total amount of liquid oil at room temperature is extremely low, and usually less than 10%. *Id.* at col. 4, lines 37-

39. An extremely low percentage of liquid at room temperature means that the SFI must in turn be extremely high. This is the opposite of the claim 1 feature of a SFI of 0. Therefore, Cochran does not teach this claim feature.

Claim 1 also requires the feature of a partially hydrogenated fat fraction between 0% and 1% of the total lipid fraction. Page 4 of the office action states that, although there is no disclosure of partially hydrogenated fat fraction in Cochran, this claimed feature is not required, i.e. 0%. This is incorrect because the reference states that the triglyceride composition contains partially hydrogenated triglycerides (*i.e.*, fats) as part of the lipid fraction (col. 4, lines 3-7), and that this triglyceride composition must well-exceed the partially hydrogenated fat fraction of 1% by weight as required by claim 1 (col. 4, lines 50-58). Therefore, Cochran does not teach this feature of claim 1.

For the above reasons, the rejection of claim 1 should be withdrawn.

Claim 10:

Claim 10 is drawn to method features for obtaining the wheat gluten fraction according to claim 1, wherein the gluten is dispersed in water up to a dry substance varying between 5 and 30%, where the pH of the dispersion is between 4.4 and 4.8, and wherein the gluten mixture is submitted to shearing actions through which the mixture is fractionated in gliadin- and glutenin-rich fractions with a gliadin/glutenin ratio of at least 2.5 and a single glutenin-rich fraction with a gliadin/glutenin ratio of less than 0.8 is obtained.

Cochran and McDonald are used in combination for a product that is substantially identical to or insignificantly different so as to render claim 10 obvious. However, the resulting wheat gluten fraction is not taught or disclosed in either reference to support a finding that the

claimed invention is substantially identical to the prior art references. Further, the claim 10 method of obtaining wheat gluten depends from claim 1, which contains features that do not yield a product which is taught, suggested, or motivated by any combination of Cochran and McDonald.

Claim 16:

Claim 16 adds a food composition including the cream filler composition to claim 1. This feature, in light of the features contained in claim 1, is not taught, suggested, or motivated by any combination of Cochran and McDonald.

**The subject matter of claims 1, 2-4, 8-10 and 16 would not have been obvious from a combination of Porcello et al. (U.S. Serial No. 4,865,859) and McDonald. Claims 1, 2-4, 8-10 and 16 are patentable under 35 U.S.C. § 103(a).**

Porcello is used for the features of a lipid fraction composed of vegetable oils from 25 to 75% by weight cottonseed oil, and about 10-55% by weight soybean oil. Porcello is also used for oils being liquid oil at room temperature and possessing a SFI of 0 (zero), and a composition that is free from saturated fat so as to meet the claimed limitation of 0% saturated fat as required in claim 1.

However, Porcello neither discloses (1) vegetable oil having a SFI of 0 at room temperature, nor (2) the combination with a gluten fraction having a specific gluten content. First, Porcello relates to oleaginous compositions comprising soybean oil with an SFI from about 20 to about 30 at room temperature; this is clearly different from 0. Furthermore, the content soybean oil is 10-55% of the total composition. The lipid fraction in the present application has a SFI of 0 at room temperature.

Second, Porcello does not disclose the combination with a gluten fraction having a specific gluten content as required by the claims (*i.e.*, “wheat gluten fraction comprising a gliadin-rich fraction wherein the gliadin/glutenin ratio is at least 2, as determined by means of the solvent fractionation method”).

There is no hint in either Porcello or McDonald to teach, suggest, or motivate the combination of these two features to yield the present invention. Therefore, the rejection of claims 1, 2-4, 8-10 and 16 must be withdrawn.

Please also note that McDonald relates to food products which contain deamidized gliadin, a product which is different from the composition claimed in the present application. The function of deamidized gliadins in frosting applications is binding of water in order to obtain a stable emulsion. All embodiments and applications described in McDonald comprises water. In the cream filler of the present invention as claimed, in contrast, this is not the case.

Claim 1:

Claim 1 includes the feature wherein a wheat gluten fraction is comprised of a gliadin-rich fraction having a gliadin/glutenin ratio that is at least 2. This is a feature that neither Porcello nor McDonald, alone or in combination, teaches, suggests, or motivates.

Claim 1 also contains the features of a lipid fraction composed of a vegetable oil having a solid fat index (SFI) of zero at room temperature. The SFI is a measure of the percentage of fat in solid phase to total fat (*i.e.*, the remainder in liquid phase) across a temperature gradient. Additionally, Claim 1 contains the features of a saturated fat fraction representing between 0 % and 5 % by weight (w/w) of the total lipid fraction and a partially hydrogenated fat fraction representing between 0 % and 1 % by weight (w/w) of the total lipid fraction.

As previously discussed, neither Porcello nor McDonald discloses (1) vegetable oil having a SFI of 0 at room temperature, nor (2) the combination with a gluten fraction having a specific gluten content. Therefore, the obviousness rejection under § 103(a) must be withdrawn.

Claims 2-4:

Claim 2 adds to the composition the features of 25 – 60 % by weight of a lipid fraction of a vegetable oil having a SFI of 0 at room temperature, a saturated fat fraction representing between 0 % and 5 % w/w of the total lipid fraction and a partially hydrogenated fat fraction representing between 0 % and 1 % w/w of the total lipid fraction; from 40 to 70 % by weight of a powder sweetener composition; and from 1 to 15 % by weight of a wheat gluten fraction having an increased gliadin content compared to the natural gliadin content of wheat gluten.

Claim 3 adds to the composition the features of 30 – 50 % by weight of a lip fraction composed of a vegetable oil having a SFI of 0 at room temperature, a saturated fat fraction representing between 0 % and 5 % w/w of the total lipid fraction and a partially hydrogenated fat fraction representing between 0 % and 1 % w/w of the total lipid fraction; from 45 to 65 % by weight of a powder sweetener composition; and from 3 to 12 % by weight of a wheat gluten fraction having an increased gliadin content compared to the natural gliadin content of wheat gluten.

Claim 4 adds to the composition in claim 1 the feature of the powder sweetener composition which comprises one or more carbohydrate-based sweeteners.

Claims 8-9:

Claim 8 has been amended to depend from claim 1, and adds the feature where the wheat gluten fraction comprises a gliadin-rich fraction wherein the gliadin/glutenin ratio is at least 2.5:1 as determined by means of the solvent fractionation method. Claim 9 depends from claim 8 and adds the feature where the wheat gluten fraction comprises a gliadin-rich fraction wherein the gliadin/glutenin ratio is at least 3:1 as determined by means of the solvent fractionation method.

Claim 10:

Claim 10 is drawn to method features for obtaining the wheat gluten fraction according to claim 1, wherein the gluten is dispersed in water up to a dry substance varying between 5 and 30%, where the pH of the dispersion is between 4.4 and 4.8, and wherein the gluten mixture is submitted to shearing actions through which the mixture is fractionated in gliadin- and glutenin-rich fractions with a gliadin/glutenin ratio of at least 2.5 and a single glutenin-rich fraction with a gliadin/glutenin ratio of less than 0.8 is obtained.

However, the resulting wheat gluten fraction is not taught or disclosed in either reference to support a finding that the claimed invention is substantially identical to the prior art references. Further, the claim 10 method of obtaining wheat gluten depends from claim 1, which contains features that do not yield a product which is taught, suggested, or motivated by any combination of Porcello and McDonald.

Claim 16:

Claim 16 adds a food composition having a cream filler composition to claim 1. This feature, in light of the features contained in claim 1, is not taught, suggested, or motivated by any combination of Porcello and McDonald.

**The subject matter of claims 7-9 would not have been obvious from a combination of Porcello et al. and Yajima (U.S. Serial No. 4,911,942). Claims 7-9 are patentable under 35 U.S.C. § 103(a).**

The above discussion of claim 1 is herein incorporated by reference.

The subject matter of claim 7 has been incorporated into claim 1.

Claim 8 has been amended to depend from claim 1, and adds the feature where the wheat gluten fraction comprises a gliadin-rich fraction wherein the gliadin/glutenin ratio is at least 2.5 as determined by means of the solvent fractionation method. Claim 9 depends from claim 8 and adds the feature where the wheat gluten fraction comprises a gliadin-rich fraction wherein the gliadin/glutenin ratio is at least 3 as determined by means of the solvent fractionation method.

As previously discussed, Porcello does not teach, suggest, or motivate any of the claimed features contained in claim 1.

Yajima is used for teaching increased viscosity results which from gliadin and an increased elasticity which results from glutenin (col. 3, lines 9-11). On this ground, Yajima is used for providing motivation to combine these properties at the ratios claimed in claims 7 (now claim 1), 8 and 9 to achieve viscoelastic (organoleptic) properties. However, the term organoleptic defines the sensory properties of a particular food or chemical, the taste, colour, odour and feel. Yet elastic properties discussed in Yajima is a feature that is neither claimed in the present application, nor a feature which provides any motivation. Rather, because Yajima does not teach, suggest, or motivate the features required in claims 8 and 9, the rejection under § 103(a) must be withdrawn.



The examiner also is requested to notice page 9 of the office action which discusses claims 2 and 3, each of which have different features that are not at issue with respect to claims 7-9.

**The subject matter of claims 5 and 6 would not have been obvious from a combination of Porcello et al., McDonald and Yost (U.S. Serial No. 5,374,438). Claims 5 and 6 are patentable under 35 U.S.C. § 103(a).**

Claim 5 adds the feature wherein the powder sweetener composition comprises one or more high intensity sweeteners. Claim 6 adds that the powder sweetener composition comprises a combination of one or more carbohydrate-based sweeteners and high intensity sweeteners. However, Porcello, McDonald, and Yost, alone or in combination, do not teach, suggest, or motivate the claimed features required by claims 5 and 6, which include the features of independent claim 1.

### CONCLUSION

Reconsideration and allowance of all claims are respectfully requested.

Respectfully,

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